

Prisoners who are suspected of having killed or attempted to kill Americans do not deserve comforts. But the use of torture undermines our global efforts against terrorism and is beneath a great Nation.

It is illegal whether U.S. personnel engage in such conduct themselves or they hand over prisoners to the government agents of another country where torture is commonly used. That happened in 2002, when U.S. agents sent a Canadian citizen to Syria, letting others do the dirty work. Yet the White House will not provide us with the documents in which they concoct theories to justify turning over detainees to foreign nations that conduct torture.

There are many victims of this policy. First are the Iraqis, Afghans, and other detainees, some of them innocent of any crime, who were tortured or subjected to cruel and degrading treatment. The International Committee of the Red Cross reported that it was told by the U.S.-run Coalition Provisional Authority in Iraq that 70 to 90 percent of those in detention were innocent civilians who had been swept up in raids.

That was information that U.S. officials gave to the ICRC. It came from our own Government. It is no wonder that after the horrific images were broadcast around the world, the Pentagon started to clean out Abu Ghraib, releasing thousands of prisoners who apparently never should have been there.

We now know that many other Iraqis and Afghans died in U.S. custody, in conditions so abhorrent they conjure up images reminiscent of a Charles Dickens novel. Many of those deaths were never investigated.

The other victims of this policy are our own soldiers, who overwhelmingly perform their duties with honor and courage, and who now have been unfairly tarnished and endangered by these images and this scandal.

Our troops have also been tarnished by profiteering companies, none more brazen than Halliburton, which have reaped huge profits while our soldiers are risking their lives and losing their lives. Yet Republicans blocked Senate action to make war profiteering a crime and hold these people accountable.

Countless people around the world, especially in the Middle East, suspected that President Bush's decision to invade Iraq had a lot more to do with Iraqi oil than with any of the other reasons he gave that have since been proven false.

I do not share that view, but what better evidence to fuel those charges than Halliburton's noncompetitive contracts and waste. It is fraud and abuse on a scale that would shock the conscience of anyone except perhaps an Enron executive. Halliburton seems to regard the U.S. Treasury as its own personal bank account. With "cost plus" contracts, what do they care how much they overcharge the taxpayers? They are guaranteed their profits re-

gardless. It is the antithesis of patriotism.

And then there is America itself. Our Bill of Rights was the model for the Universal Declaration of Human Rights. Generations of Americans have tried to live up to its promise and to set an example for the world. The damage this administration has caused to our credibility and reputation as a nation of laws and of decency will take years to repair. Just as they have squandered so much of the world's respect and support for our country after September 11, so now have they squandered much of the human rights leadership that has taken so many years to painstakingly build. This is a travesty of monumental proportions.

The individuals who committed those acts are being punished, as they must be. But what of those who gave the orders or set the tone or looked the other way? What of the White House and Pentagon lawyers who tried to justify the use of torture in their legal arguments? These lawyers have twisted the law, advising the President that for an abuse to rise to the level of torture it must go on for months or even years, and be so severe as to generate the type of pain that would result from organ failure or even death.

Think about that, and you begin to realize how destructive and outrageous this is.

And what of the President? Last March, referring to the capture of U.S. soldiers by Iraqi forces, President Bush said, "We expect them to be treated humanely, just like we'll treat any prisoner of theirs that we capture humanely. If not, the people who mistreat the prisoners will be treated as war criminals."

At the same time, the President's own lawyer, ignoring the Torture Convention altogether, called the Geneva Conventions "quaint" and "obsolete." Today, soldiers who have spoken out about the crimes they witnessed and the involvement of their superiors have been threatened and punished by the Defense Department they have honorably served.

One need only review history to understand why the law makes no exception for torture. The torture of criminal suspects flagrantly violates the presumption of innocence on which our criminal jurisprudence is based, and confessions extracted through torture are notoriously unreliable.

Once exceptions are made for torture it is impossible to draw the line, and more troubling is who would be in charge of drawing it. If torture is justified in Afghanistan, why is it not justified in China, or Syria, or Argentina, or Miami?

If torture is justified to obtain information from a suspected terrorist, why not from his wife or children, or from his friends or acquaintances who might know of his activities or his whereabouts? This has happened in many countries, and decades later those societies are still trying to recover.

The United States cannot become the model of justice our forefathers envisioned if we continue to tolerate the twisted logic that has been given currency with increasing regularity in U.S. military prisons and in the White House since 9/11. Some argue it is a new world since those terrible attacks on our country 3 years ago. And to some degree, they are right, which is why we have reacted with tougher laws and better tools to fight this war. But do we really want to usher in a new world that justifies inhumane, immoral and cruel treatment as any means to an end?

As a nation of laws, and as the world's oldest democracy and champion of human rights, we must categorically reject the dangerous notion that is now in our midst, seeking our assent, or our silence, that torture can be legally justified and normalized.

President Bush has said he wants the whole truth, but he and his administration have been stonewalling from the top. The President must order all relevant agencies to release the memos from which these policies were devised.

He must clearly and unequivocally order all of his subordinates and every member of our armed services to adhere to our international treaty obligations including the Geneva Conventions, the Torture Convention, and all applicable U.S. laws. And finally, there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion.

Only when these actions are taken will we begin to heal the damage that has been done.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Texas.

#### INVESTIGATION INTO TREATMENT OF IRAQI PRISONERS

Mr. CORNYN. Madam President, I want to take a few minutes to respond to some of the comments made by the Senator from Vermont because I do think the characterization he gave to some of what has gone on is at least incomplete. I disagree with some of his conclusions, and I want to point out why because I believe the Members of this body deserve to have a complete picture and at least have the benefit of considering alternative conclusions from those drawn by the Senator from Vermont.

I have the high honor of serving on both the Senate Armed Services Committee and the Judiciary Committee. Certainly, the Senator from Vermont is the ranking member of the Judiciary Committee, but I would remind this body that the Senate Armed Services Committee, under the leadership of our chairman, has been investigating the Abu Ghraib prison situation and the interrogation practices and policies of the U.S. Government since at least May 11. We have had a series of hearings there which have been very helpful

in understanding both the nature of the problem and the nature of the investigation that is ongoing, ultimately, hopefully, leading up to a conclusion as to who did what, whether there were, indeed, as there appears to be, some violations of American policy with regard to the interrogation of detainees, and, of course, to hold the guilty accountable.

That is what we are: We are a nation of laws. We believe in the rule of law. We believe the law applies equally to everyone, no matter how high up in the chain of command you are or how low you are in the chain of command. And I believe we will be true to our ideals in that regard. But I would say that much of what the Senator from Vermont has suggested needs to be produced is sort of in a vacuum of sorts, without the benefit of a lot of what the Senate Armed Services Committee has already done, to find out what happened, what the policies were, what the circumstances were, whether this represents an aberration or whether it represents something worse.

To date I would say it is pretty clear that what we saw, as a result of a handful of actions on behalf of American soldiers, was an aberration. And thank goodness. There is no question, though, that these soldiers lacked the proper training and, indeed, the proper leadership. Those are chain of command problems and ought to be taken as high as they go as a result of the investigation.

But as the Presiding Officer knows, there are at least six different investigations into the circumstances at the Abu Ghraib prison. We need to let that process run its course to find out what the facts and circumstances are. As I recall, we are awaiting the report of General Fay and perhaps others. We ought to get to the facts and not succumb to the temptation during an election year to overly politicize what is going on.

While we have always respected the rights and the civil liberties of every American, we also need to be concerned about the rights and the health and the welfare of our young men and women who are serving our Nation so nobly in the battlefield. That requires the ability to get good, actionable intelligence.

The present occupant of the Chair was there at the Senate Armed Services Committee hearing. General Jeffrey Miller testified on May 19. I asked him at that hearing:

In your opinion, General Miller, is the military intelligence that you've been able to gain from those who have recruited, financed, and carried out terrorist activities against the United States or our military, has that intelligence you gained saved American lives?

General Miller said:

Senator, absolutely.

Then I asked General Abizaid, the CENTCOM commander:

And would you confirm for us, General Abizaid, that that's also true within the Central Command?

And General Abizaid—who I think all of us, as we have come to know more about him, have come to admire him and his leadership capacity—said forthrightly:

Senator, I agree, that's true. I would also like to add that some of these people that we are dealing with are some of the most despicable characters you could ever imagine. They spend every waking moment trying to figure out how to deliver a weapon of mass destruction into the middle of our country. And we should not kid ourselves about what they are capable of doing to us. And we have to deal with them.

It is very important to keep in proper context what is going on and the fact that we are at war, a war not of our choosing—of course, we were attacked—but a war that we must and we will finish.

I want to point out another thing that is important to the overall context of what the Leahy amendment seeks to get. That is, we have two cases currently pending at the U.S. Supreme Court in the Hamdi and the Padilla cases, where the U.S. Supreme Court will tell all of us in America what the law requires with regard to the treatment of unlawful combatants, including one who happens to be an American citizen, Jose Padilla, but who joined arms with the enemy, with the terrorists who seek to attack and to kill Americans on our own soil. And that advice, that direction is forthcoming. It could literally come down, of course, any day now, since the Supreme Court's term is about to expire.

The characterization my colleague from Vermont gave to these memoranda is not accurate. As a matter of fact, as the Senator may recall—and maybe he said this; I didn't hear it—the Senate Judiciary Committee voted against issuing a subpoena but then authorized the chairman and perhaps the ranking member to engage in discussions with both Alberto Gonzales, White House counsel, and Attorney General Ashcroft to determine what legal memoranda they might be willing to voluntarily provide the committee. So we voted against issuance of the subpoena.

But whether it is the Bybee memo that has been discussed and covered by so much of the press, that is 50 pages long, or whether it is any of the other memos the Department of Defense and Department of Justice released yesterday, they reveal not a coverup but a careful, deliberate, and scholarly approach to determining what, in fact, the law requires.

If, in fact, as the folks who are suggesting there is some sort of coverup or some sort of policy of abuse—either one of direction or in terms of creating an atmosphere where it should happen—these memos that have been released completely refute that idea of lawlessness that they are seeking to spin.

I am deeply disturbed by the increasingly politicized nature of the debate on the war on terror. We are at war against a people who will stop at nothing

to kill innocent Americans. We paid the price for not aggressively pursuing those terrorists and this information in the past, at least since 1993, with the bombing of the World Trade Center. But after 9/11, our Nation found itself at war with a new kind of enemy from whom we need information, actionable intelligence, that can mean the difference between life and death for our troops and our citizens.

As I said a moment ago, there have been many baseless allegations that the Department of Defense has used torture during interrogations as a matter of policy. But what happened at Abu Ghraib was not an administration policy, not DOD policy, not CENTCOM policy, or any other official policy. It was completely beyond the pale of acceptable behavior, and those responsible will be held to account and will be punished.

As recently as yesterday, President Bush made the following comments:

We do not condone torture. I have never ordered torture. I will never order torture. The values of this country are such that torture is not a part of our soul and our being.

Yet despite these unequivocal comments from the Commander in Chief, political opponents of this administration continue to allege, without foundation, that our Nation's leaders somehow support the use of torture. It is important to remind some of our colleagues that, again, the purpose of these interrogations is to gather intelligence consistent with our values, which means no torture and humane treatment of all detainees. The interrogations we have conducted in Iraq and at Guantanamo Bay have saved American lives. I believe it is critical that we continue to aggressively, within the limits of the law and humane treatment, seek actionable intelligence and continue to save American lives.

Unfortunately, it seems there is an irresistible impulse to score cheap political points by criticizing the careful, deliberative process the administration undertook to ensure that those very important interrogations were conducted within the law. The techniques of our Armed Forces, including those used in Iraq or at Guantanamo Bay, can hardly be described as torture.

I, like a number of other Members, have traveled to Guantanamo Bay to observe for myself, because I was concerned. I was interested. I wanted to learn how we are handling these people who have recruited, trained, and financed terrorist activity against the United States and, if given the opportunity to do so, would do so again.

For some reason, there are certain Members, and indeed certain elements of the press, who are trying to convince the American public that making a suspected terrorist stand for 4 hours, or giving them only 4 hours of sleep constitutes torture. They want them to believe that poking someone in the chest with a finger or changing their sleep patterns or meal selection is cruel or inhumane.

Let me read quickly some of the approved methods of interrogation which some of the critics claim is torture: Asking straightforward questions; incentive/removal of incentive; emotional love, which is playing on the love a detainee has for an individual or group; playing on the hatred an individual has for a individual or group; something called fear up harsh; fear up mild; reduced fear; pride up and ego up; pride and ego down; futility, which is invoking the feeling of futility of a detainee; the we-know-all technique, convincing the detainee that the interrogator knows the answers to the questions he is asking the detainee; establish your identity, or convincing the detainee the interrogator has mistaken the detainee for someone else; repetition approach; file and dossier, or convincing the detainee the interrogator has a damning and inaccurate file, which must be fixed; rapid fire questions; silence; change of scenery down; dietary manipulation.

For example, it says in this approved memorandum, a change from hot rations to MREs. That is hardly something that could be said to constitute torture.

Next is environmental manipulation, or adjusting the environment to create moderate discomfort; sleep adjustment; false flag; and isolation.

These are not torture under anybody's definition. These are legal and humane methods of extracting information from terrorists.

It is an affront to our men and women in uniform to accuse them of torturing terrorists when the reality is our policy calls for all detainees to be treated humanely. The time has come to ask at what point does this largely partisan and media-driven witch hunt so damage and detract from the mission of our troops in the field that it irreparably harms U.S. interests, including our ability to collect life-saving intelligence?

Because of the onslaught by some on Capitol Hill—a fact not lost upon our enemy—agencies have been forced to disclose procedures al-Qaida and other terrorists now train and use to defend against, which is creating a roadmap.

Plain and simple, interrogations save lives. The interrogations we have conducted over the past 2½ years have saved lives of soldiers in the field and innocent civilians at home. It is high time we get our priorities straight.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, I am happy to respond to my colleague from Texas about an issue which is in this morning's paper and on the minds of many Americans and people around the world. In today's Washington Post, there are two major front-page stories related in an unusual way. Here is the photo of the parents of the South Korean who was beheaded in Iraq—another heinous, barbaric crime committed by terrorist extremists. Next to

it, we have an article entitled "Memo on Interrogation Tactics Is Disavowed."

In this article about the interrogation tactics we learn President Bush's White House is now disavowing an opinion from the Department of Justice issued in August of 2002 relative to interrogation tactics that could be used by the U.S. Armed Forces. It appears now that this memo has become public, the White House has found it necessary to publicly disavow this statement by the Department of Justice and Attorney General Ashcroft. Why?

Well, I think it is obvious.

For a lengthy period of time the Bush administration and the Department of Justice of Attorney General Ashcroft have been involved in a fierce, protracted debate about acceptable interrogation techniques and the definition of torture, a debate which relates to issues resolved over a hundred years ago, in many cases, by the Government of the United States of America when we made it our express policy to disavow torture. When we later entered into a Geneva convention after the Nazi war crimes, when we later had a convention on torture, brought to Congress by President Ronald Reagan, this series of treaties enacted by the United States making them the law of the land said we as a Nation stood with civilized nations around the world in condemning and prohibiting torture, cruel and inhumane and degrading treatment of prisoners. Our statements were unequivocal. We stated that for the world.

Why? Frankly, because we believed the United States of America and the values we represent on the floor of the Senate are different than some. There may be some in this country who will argue we should answer the beheading of innocent people, like this South Korean, with similar violence. Thank God, their voices are few and ignored by most. We have said from the beginning we will not stoop to this level.

If there is anybody who believes that is acceptable conduct, it is not the United States of America. That is a statement of values and principles, made first by President Abraham Lincoln during the bloody Civil War, and by Presidents of both political parties for decades thereafter. We know, however, that this administration, once engaged in the war on terror, decided to engage in a new debate on the definition of torture.

Two weeks ago, the Attorney General of the United States came to the Senate Judiciary Committee and said to us unequivocally twice that it was not his job, nor the job of this administration, to define torture. He said that on the record. It was broadcast across America and around the world. The very moment he said that, major news organizations were releasing a memo from Attorney General Ashcroft's Department of Justice, which defied his statement to the Senate Judiciary Com-

mittee, this memo of August 1, 2002, by Assistant Attorney General Bybee, a memorandum sent to Alberto Gonzales, counsel to President George W. Bush. According to Attorney General Ashcroft, this memo should not exist. He told us in open session it was not his job or the job of this administration to define torture. He said Congress has done that, and the laws do that.

Look at this memo of August 1, 2002. Turn to this infamous page 13 and read what Attorney General Ashcroft's Department of Justice said about torture:

The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.

You will not find these words in any treaty the United States has entered into, certainly not in our Constitution, nor in the laws of the land. You will find this in the memo from Attorney General Ashcroft's Justice Department. It is their definition of torture, sent to the President of the United States General Counsel, Mr. Gonzales.

For the Attorney General to tell us he is not in the business of defining torture, frankly, doesn't square with the reality of this official memo from his own Department. If that were the only thing in this memo, it would be bad enough. But there is more. Because in this memo, you will find a rationalization to suggest that the President, as Commander in Chief, is not bound by the laws of the land. That is a statement to which most people will say, I am sure they didn't say that. Let me read to you from a section about Section 2340A, the statute that makes torture a crime:

Any effort to apply Section 2340A in a manner that interferes with the President's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional.

Sadly, it went further. I read from the same memo:

Section 2340A must be construed as not applying to interrogations undertaken pursuant to his Commander in Chief authority.

In other words, this memo from the Ashcroft Department of Justice to Mr. Gonzales and the White House went beyond the definition of torture. It created an escape hatch for this President to say, as Commander in Chief: I am not bound by the laws of the land when it comes to torture and the interrogation of witnesses.

There are some who come to the floor and wonder why we are raising this issue.

What is the importance of this issue? The importance of this issue will be obvious to anyone who reads this memorandum now available on the Internet. This administration engaged in a fierce and protracted debate about whether they could redefine torture for the war on terrorism and whether this President, as Commander in Chief, was above the law.

For those of us in this Chamber who have sworn to uphold the Constitution of the United States, a solemn oath which each of us, including the President, must take, this is, indeed, an extremely serious situation: That this administration would think this President and those acting under his authority as Commander in Chief would not be bound by treaties, by the Constitution, or by the laws of the land.

Can any inquiry be more serious when the question, which must be asked by this Chamber of the Chief Executive of the United States, is whether he has gone too far, violating the law of the land?

So what will come before us in a short time is an effort to say to Attorney General Ashcroft: It is not enough that we have to rely on leaked memos released on the Internet. We demand of you the disclosure of relevant documents which will give us a better picture and a better understanding of this debate within the Bush administration about torture because, in the context of where we are today, this is not an academic issue. Because of Abu Ghraib and the shameless conduct of the men and women in that prison, which has been captured in photographs released around the world, the United States is being tested. We are being asked not only within our own borders, but around the world, whether in the war on terrorism, we have abandoned a commitment of over a century that says we will not engage in torture, that we are committed to the humane treatment of prisoners.

It is, unfortunately, a timely and legitimate question which we cannot duck; we cannot avoid. In order to answer that question, we understand we have to be open and transparent. We have to not only say to the world that we are the same country we were before 9/11. After Abu Ghraib, we have to show them proof, and the proof will be in the documents which the Attorney General has refused to disclose.

The Attorney General and the President have several legal options when Congress legitimately asks for documents. The President can assert his executive privilege. That was done by President Nixon during the Watergate scandal. It was contested in court all the way to the Supreme Court, but it is something a President can assert. Only the Court can ultimately resolve the dispute then between Congress and the President. President Bush has not asserted executive privilege when it comes to these memos of Attorney General Ashcroft. Or the Attorney General can say: There is a statutory privilege that allows me to withhold these documents.

The request for information that we are going to put in amendment form allows classified material to be treated separately so it would not in any way endanger the troops who are defending this country and defending themselves in Iraq and Afghanistan.

When asked point-blank by myself and others in the Senate Judiciary

Committee, Attorney General Ashcroft said: I cannot give you a legal authority for the reason I am not going to release these documents. He said: I just personally believe it is not the right thing to do.

I reminded the Attorney General—and it is worth repeating now—as important as his personal beliefs may be, they are not the law. If this Department of Justice and this Attorney General and this President cannot produce a legal reason for failing to disclose these documents, then they are asking to be above the law. No President, no Attorney General, no Senator, none of us serving this country or in this Congress are above the law and certainly not on an issue of this magnitude.

Some critics have come to the floor and said this request by Members of the Senate of the Attorney General to produce these important documents is the product of “an irresistible impulse to score cheap political points.” I quote a colleague of mine who said those words just moments ago, “cheap political points.”

I remind my colleagues and all others, this White House, just yesterday, decided this memorandum from Attorney General Ashcroft is so bad, so wrong that they are now disavowing the very memo which was sent to the chief counsel at the White House almost 2 years ago.

This is not about some political exercise. This is about truth and transparency and a disclosure which is needed to restore the confidence in the core values of America not only for the American people but for people around the world.

Yesterday, in a transparent effort to stop the pressure for full disclosure, the administration provided Congress with a two-inch stack of documents. But a cursory review of these documents reveals that the administration is withholding a lot of crucial information.

If anything, the documents that were released yesterday make it even more clear that we need complete disclosure from the administration. As the Chicago Tribune reported today:

The memos left unanswered at least as many questions as they answered. White House officials acknowledged that the documents provided only a partial record of the administration's actions concerning treatment of prisoners.

What do the documents that were released show? We now know that the Justice Department memo sent to Mr. Gonzales was the basis for the Defense Department's decision to approve the use of coercive interrogation techniques at Guantanamo Bay.

The Department of Defense and the Department of Justice were asking questions which are almost impossible for me to articulate on the floor of the Senate, but I must. They asked: How far can our interrogators go before they may be charged with a war crime? How far can they go before they might face a war crime tribunal?

That is the serious nature of this internal debate within the Department of Defense and the Department of Justice. That debate went on before Abu Ghraib. That debate went on before those horrendous photographs became part of the history of our occupation of Iraq.

Is it any wonder that Members of the Senate are coming to the floor today and saying we have an obligation to require this administration to completely disclose all of the documents and be open and honest about the dialogue which went on between the White House and the agencies of our Government?

To do less, sadly, is to create a question, an unanswered question, about whether the United States has changed.

Let me tell you for a moment some of the issues at hand. One of my colleagues came to the floor and dismissed some of the criticism of interrogation tactics as he said, frankly, tying the hands of interrogators who are only trying to protect us. We have learned something about interrogation tactics. We have learned that if you use torture—physical and mental torture—the person being interrogated will say almost anything, truthful or not, to make it stop.

The PRESIDING OFFICER. The Senator's 15 minutes in morning business has expired.

Mr. DURBIN. I ask for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. We know torture and the types of treatment, techniques, and interrogation tactics which have been prohibited by law in this country for many years are counterproductive. The Attorney General said as much before us. Torture does not work. People will lie for the pain to stop, and that is one of the reasons we do not engage in torture.

Secondly, my colleague, Senator BIDEN of Delaware, made a point and made it clearly. He said, in his words: The reason the United States does not engage in torture is to protect Senator BIDEN's son, who is a member of the military, and other members of the military from being subjected to torture.

We establish standards of humane and civilized conduct not only for ourselves but to demand them of the rest of the world. Will there be terrorists who ignore them? Of course. But who will argue with 140,000 American lives on the line in Iraq that we should somehow stoop to inhumane and barbaric conduct in this war against terrorism, subjecting all of our soldiers and many other innocent Americans to the same possibility? We have rejected that, and we should continue to reject that.

I close by saying this is a very serious issue for our Nation. The world is indeed watching us. They are asking us whether the United States will stand

behind its treaties in the age of terrorism. The Senate has an obligation to the Constitution and to the American people to answer these questions. Those who vote to table this amendment want to keep this conversation muted and these memoranda hidden from the American people. That is wrong. That is wrong for this government or any government. The American people have the right to know in what their government is involved. Transparency is critically important.

I urge my colleagues, and I hope a few of my Republican colleagues will join those of us on this side of the aisle, to stand up for the rule of law, a rule of law which has guided Presidents from Abraham Lincoln's time in the Civil War through President Reagan, through every President. There is no reason this President should be treated differently.

When it is offered, I urge my colleagues to support the Leahy amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent that I be permitted to speak for up to 10 minutes, the Senator from New York be permitted to speak for 10 minutes, and then the distinguished Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. I have been listening to my dear colleague from Illinois, and I have to say what happened at Abu Ghraib was absolutely wrong. Everybody knows that. What happened there has to be decied. We all have to speak out about it. But the minute they found out about it, they started the process of prosecuting the people who did this. It appeared to be a small cadre of people, all of whom will likely receive either severe reprimands or actual prosecution. In other words, the system is working.

It should never have happened. We decry it. It was wrong. All the screaming in the world by either side on this floor is not going to make any difference. It happened, and we are all ashamed of it.

Having said that, if we listen to the arguments of the other side, transparency is absolutely critical in all the things we do. Well, then that means we ought to do away with the Intelligence Committee because there are a lot of things that are not transparent to the American people, especially when it involves national security, especially when it involves our young people's lives while overseas, especially when it involves all kinds of matters that are better left non-transparent.

I went on the Internet and I read every one of these documents that was on the Internet. Most all of them were legal opinions. Now, one might differ with legal opinions. I do not know any two lawyers who agree on everything anyway, but if one reads those opinions they do make sense. For somebody to

say *carte blanche* that the Geneva Conventions apply and should apply to everything, that flies in the face of not only international law, it flies in the face of what is happening in this situation.

This is not a normal situation. We are not fighting autonomous countries right now. We are not fighting against organized enemies who wear uniforms and fight conventional battles. We are not fighting the normal course of battles that we have had through the years where we have had to, as gentlemen, recognize the civil way of doing things. We are fighting absolute terrorists who would destroy this country and destroy every person involved in our overseas operations if they had a chance, and they would do it by any means possible: biological, chemical, weapons of mass destruction, nuclear, if necessary, if they had the capacity to do it.

If we are so transparent that we tell them everything that is on our minds, then we are putting our young people at risk.

Yes, my colleagues can find fault with the legal opinions. People do. I might even agree or disagree on some of these legal opinions. But they were well-reasoned opinions. I know some of the people who actually rendered them. They are top notch authorities in these areas. My colleagues might disagree with them, but they cannot necessarily refute them.

I was in Guantanamo a few weeks ago. I went completely through that camp. I was shown everything I wanted to see, and that meant just about everything. I have read article after article about how terrible it is at Guantanamo, how much they violated the law, all because of conjecture. I have seen our colleagues on the other side, and I have seen the media excoriate this administration because of all of these bad things that have happened at Guantanamo.

Well, I went through Guantanamo, and it is a well-run camp with incentives. Now, some of our colleagues do not even like incentives. They will even criticize that because it is the Bush administration, after all. Of course, I know our colleagues are not making this kind of criticism because they want to find fault with the Bush administration or cast blame on the Bush administration or make the Bush administration look as if maybe it is not doing everything it should. I know that could not possibly be in their minds. Or that they are politicizing this because of the election that is going on. I know they would not do a thing like that. I just know it. I just know it deep within my soul.

My colleagues can differ with the legal opinions and they can certainly condemn what happened at Abu Ghraib. But these things are not happening at Guantanamo Bay. They did happen in Afghanistan, but in those cases there are investigations and prosecutions on their way. I do not think

we have to be transparent about everything around here. Transparency hurts our young men and women, too. It subjects them to all kinds of ridiculous problems.

It is important for us to get to the bottom of these things. I think it is important for us to have an overview, but I also think it is important for us to be fair and not just try to score, yes, cheap political points. Unfortunately, there is too much of that around here. It has happened on both sides from time to time, but it has really been happening this year. Every time it happens, I suggest we ought to stop and think about our young men and women overseas, whether we are helping them or hurting them. Some of these arguments are hurting them.

When I went to Guantanamo, I watched two interrogations, one with a terrorist who was very uncooperative and another one who at first was very uncooperative but because of work by some very effective people, using very effective interrogation techniques—not torture, by the way, not even close to torture—they have been able to obtain information that has saved our boys' and girls' lives.

Interrogations have to go on and they are not patty-cake games. There is no excuse for anything that even comes close to torture. And I believe that other than isolated incidents—which are going to happen in times of war, especially when we are fighting these type of terrorists—I suggest that our people have abided by the Geneva Conventions even though it is correct to say that in this type of a situation the Geneva Conventions may not apply.

Personally, I believe we ought to apply them to everything because there is a wide variety of interrogation techniques that are permissible under the Geneva Conventions. I won't go through all of those because I don't want to be transparent. Nor do I want some techniques that are acceptable to be criticized by any colleagues from any side to score cheap political points.

Frankly, I am getting a little tired of this desire to undermine everything that is going on over in Iraq and Afghanistan. I think it is time for us to get together and work in unison to try to help our young men and women. Transparency sometimes happens to be the worst thing we can do.

That doesn't mean we should not get to the bottom of these awful things that have happened at Abu Ghraib. That doesn't mean we should tolerate that type of irresponsible and criminal conduct. Of course we should not. There is nobody in this body who disagrees on that, to my knowledge; nobody. But to try to imply that the President of the United States is responsible for these aberrational activities by a few is, I think, irresponsible in and of itself and I think it is just too much of this political world that we are in right now.

Madam President, I went through the camp itself down at Guantanamo. It

was well run. There were people there who never were fed so well in their lives. There were arrows, so they could pray in the correct direction. There were Korans in every cell as far as I could see.

I saw many chessboards and checkerboards. I saw outdoor areas where they could exercise. I saw a lot of things that were being done right. I saw interrogations that were not staged for me, and I have to tell you it was run right. Anybody who thinks these are patty-cake games, that we must really hold and pet their hands, just isn't living in the real world.

I agree and I concede and I hope our colleagues—everybody on both sides agree there are certain things you can do within the parameters of the Geneva Conventions and there are certain things you can't do. But I guarantee if you went through everything that can be done in the Geneva Conventions there would be some people who would be very upset that those types of interrogation techniques could be used. I am not going to go through them all because I know the more stressful ones were not being used with the authority of our people. I think to imply that they were is wrong.

Before I close, let me just take a moment to comment briefly on statements made by my Democratic colleagues, attacking the President and the administration for not being forthcoming in releasing documents, notwithstanding the fact that they just declassified and released approximately 260 pages of legal memoranda.

They attack the Attorney General for refusing to hand over three documents when he testified before the Committee, but since then, we have received those documents from the White House.

Now, even though they lost on this issue before the Judiciary Committee, they are now trying to bring it up as an amendment on the floor.

In fact, they want us to vote on a subpoena before the time set to comply with the document request has passed. It is simply premature to issue any subpoena at this time.

I urge my colleagues to vote against this amendment if the Senator from Nevada decides to reintroduce it.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New York is recognized for 10 minutes.

Mr. SCHUMER. Madam President, I thank my colleagues for this debate. The bottom line here to me is simple. That is, I must disagree with my good friend from Utah. I think transparency is to be preferred. Maybe it should not be in all instances but that ought to be the presumption and there ought to be strong argument before any transparency is not done.

Why is transparency important? I will tell you why: Because it makes better law. It makes better rules. The whole foundation of our Government has been based on openness—open de-

bate, open discussion. When that happens, we end up with better laws. Time and time again throughout the over 200-year history of this Republic, when things are done in secret, it leads to trouble.

This is a very delicate issue. There is no question about it. Obviously, we are in a new world, in a new situation. I don't think absolutes always govern in these kinds of situations. That is for sure. I am not sure exactly where the line is to be drawn. I don't think anyone is. But I am certain of one thing and that is you will draw the line a lot better when there is open debate and open discussion. After all, we are talking about the place where liberty and security clash.

The beauty of our system of government is that it is able to handle clashing values such as this in an extremely successful way, and has been almost certainly or almost universally for all the years of the Republic. Particularly the Founding Fathers, who debated these issues over and over again, wanted transparency when they were debating. That is why there is separation of powers. That is one of the reasons the whole system was set up with a legislative body and an executive branch. If, indeed, the Founding Fathers thought this all should be done in the executive branch behind closed doors, we would have had a totally different system.

Yet what we have found in this Justice Department all too often, in this administration all too often, when the vital issues of liberty versus security should be decided, there is an aversion to debate. There is a preference for doing this in secret, in the dark, behind closed doors. On issue after issue after issue, when that has been done, a bad result occurred.

My colleague from Utah seems quite certain what happened at Abu Ghraib and other places. He may be the only one in this Chamber who is. I don't know how far the chain of command went. I don't know which memos exist and don't exist and what they say and which were dispositive. I have real doubts that it was the noncommissioned officers at the bottom of the chain who were the only ones who had anything to do with this, but who knows? Who knows? We are not going to know anything until we get these memos.

If they have things that should be classified, let those be redacted. If there are certain things that would damage the security of our soldiers, of our country, let those be redacted.

But I doubt even my colleague from Utah, who stated that no one in this Chamber feels we should not have transparency and debate—I think we mistake two things. There are the difficulties and practicalities of living in this real world, this post-9/11 world, and I have spoken about that at the hearing and everywhere else. There is the leap in logic, the incorrect logic, that says because those issues are difficult they should be decided in the

dark, in secret. The two don't follow. In fact, I would argue the opposite follows. The more difficult the issue, the more dangerous it is to either liberty or security or to both, as in this case it may be, the more we need openness, the more we need discussion.

Again, if this were the first time that this Justice Department had decided to deal with terribly sensitive and difficult issues in secret I don't think there would be such a brouhaha in this Chamber or in the country. But it is a pattern that happens over and over and over again. Our Attorney General has come to testify before our Judiciary Committee twice since his ascension to that high office. When we ask questions, we routinely get no answer, or answers that do not deal with the questions. There is almost a mistrust of open debate, a mistrust of the legislative body, a mistrust that the American people ultimately in their wisdom will come to the right conclusion.

It is almost a sort of "We know best we can't trust you to know anything" type attitude. I am surprised to see so many of my colleagues defending that attitude.

Again, let's not mistake where we come down on the substance of this issue, where there will be variation—my colleague from Illinois and my colleague from Utah had different views—with the need for openness, the need for transparency, the need for debate, and the faith that certainly George Washington and Thomas Jefferson and James Madison and Alexander Hamilton had, that we should have as well, and that is that open debate will lead to the right conclusion. That is democracy. It is faith in the people and ultimately their ability to make the right decisions after open, fair debate, after both sides are presented.

That faith has been sadly lacking by the Attorney General and, I regret to say, in good part by this administration. So we come tonight, trying to force the issue. We believe we are living up to our constitutional responsibilities. We believe that if the Founding Fathers were looking down on this Chamber they would say: You are doing the right thing to get these documents and make them public, to have an open debate.

I hope and pray some of my colleagues on the other side of the aisle will see this.

When Attorney General Ashcroft came before our committee and didn't claim executive privilege and didn't claim what he was talking about was classified, but said he would refuse to answer the committee anyway, that is not what this Chamber is all about, or these hearings are all about, or this Government is all about. That is why when that has happened in the past, there have been discussions of contempt of Congress. We wish to avoid those kinds of confrontations. We want to come to an honest discussion.

Everyone will admit there were problems. My colleague from Utah said



that. Well, do you think those problems were *sui generis*? I would argue those problems could well have resulted because of a tendency for secrecy, or because of the aversion to open debate. For all we know, there were contradictory memos floating around the Department of Justice and floating around the Department of Defense. For all we know, majors, captains, and colonels who had to interpret these things on the ground were totally confused. We should find out all of this.

Again, to my colleagues, I hope we will agree to the Leahy amendment; I hope we will agree to the Reid amendment to the Leahy amendment; we will get to the bottom of this and come up with a policy in this difficult world and difficult position that is satisfactory, or at least the best solution where there may be no solution that satisfies everybody.

I yield the floor.

THE PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senator from Alabama is recognized for 10 minutes.

Mr. SESSIONS. Thank you, Mr. President.

I would like to comment on some of the things that have been said.

First of all, I believe there are things our country has every right to maintain secrecy on. I think the administration has been open about producing memorandum to us in a way that I don't know they are required to do. I was a Federal attorney in the Department of Justice and a U.S. attorney for 12 years. I have some appreciation for the way the Government works. The President has a right to receive legal advice on all the options he may have from his Attorney General or staff attorneys. In fact, a lot of reference has been made here, and as far as I can tell, Attorney General Ashcroft's memoranda are memoranda written only by lower level attorneys, detailing the legal options available in a time of war.

Certainly we want to encourage attorneys to consider these ideas and these issues on what is appropriate in terms of interrogating prisoners who are bent upon the destruction of the United States of America and as many of its citizens in this country as they can possibly kill. That is fact, and we know it. The rules of law and of war are a joke to the terrorists that we have captured and others still bent on attacking Americans. They care nothing about it. They make television movies of beheading people. That is what they think of the rules of law.

So what we need to do is decide what is appropriate and what laws we are bound by, and we ought to set a good policy there.

I would say this: The Senator from New York is a good lawyer. He has said in his own view that torture sometimes may be necessary. That is what Senator SCHUMER said.

I think any Attorney General should properly advise any President of the

United States in time of war on absolutely what the limits of his powers are. Those are things that maybe ought not be bandied around the world. It is hypothetical. You don't know what the precise circumstances are.

But the question that started all of this is abuses in prison in Iraq. The memos at the center of this debate have absolutely no connection—there is no connection—between what went on in Iraq and these memos, because our soldiers were operating under established policies of the military and internal discussions between the President and various lawyers, or memoranda they may have received from various lawyers.

I want to say this about Attorney General Ashcroft. I was at the Judiciary Committee hearing when he testified. I saw him subjected to unfair abuse by former colleagues on that committee which was embarrassing to the committee. I don't think I have ever seen in my experience in this Congress the kind of disingenuous and unfair treatment of a former Member of this body. It was not right. The ranking member was using the whole time to make a litany of distortions and charges against the Attorney General where he had no opportunity to answer them. He knew there was no way he could. It was not right. It was wrong. I said that then, and I say it now. He had no opportunity to respond to the ranking Member. Senator LEAHY knew it, and said these things one right after another: You did this, you did that. They continued in that vein.

The question here was, Oh, he wouldn't define torture, yet he had a memorandum defining torture.

That is not what Attorney General Ashcroft said. Go back and read the transcript. I saw what he said. Attorney General Ashcroft is a smart man, an honest man, and he answered the question directly. He said, Senator, the Congress defined torture. It is not for me to define torture. You define torture. The Attorney General doesn't define torture. I am not defining torture. The Congress has already defined it.

There is a statute. I have a copy of it here in which we defined it under certain circumstances. We set out an anti-torture statute. That is what the Attorney General was referring to.

Then somebody with great demand said, We want these memos; you are going to give them right now. Are you giving them or not? The Attorney General sat there in a nice, direct, soft way, and said, No, Senator, I am not giving you these right now. Are you claiming executive privilege? He said, No, I am not claiming executive privilege.

These are memorandum submitted to the President of the United States. It is the memorandum of his client. It is the President's memorandum. It is not his to give. He can't go around giving out the confidential information he sent to the President of the United States about what he can do during the

conduct of a war. That is not right. He didn't do it. And he didn't back down on it. One of the Senators said, Well, this is important because I have a son in uniform. The Attorney General said, My son has been in Iraq. He just got home, and he is going back to Iraq. He is in uniform, too. I care about this issue.

I don't think what has been said is fair.

With regard to the amendment that is pending, I reject it. We need to vote it down. It is political. It is designed to embarrass this administration politically, and it hurts us around the world. We are asked to cast a vote suggesting that this administration has not conducted itself in a proper way. The evidence does not show that.

I am on the Armed Services Committee as well as the Judiciary Committee. We have had, I think, four hearings in Armed Services. We brought back the top general. We had the Secretary of Defense, Secretary Rumsfeld. We had Secretary Wolfowitz, the Deputy Secretary. We had General Abizaid and General Sanchez. We had General Taguba who went over there and conducted the investigation and issued the report on it.

I heard all of that evidence. None of them said, Well, we got a memorandum from the Attorney General that the President of the United States signed off and said we are supposed to torture prisoners, we are supposed to carry them around, move them around and put hoods over their heads, and otherwise abuse them.

There is no evidence that was so. In fact, the military had a pretty good series of policies about how to treat prisoners. Some said, some of them went too far. If some of them went too far, let's hear exactly what they say went too far and what was wrong. If we need to change that policy, I am willing to discuss that. In fact, we are discussing that at this very moment.

A number of the things that were so objectionable, none of the things that happened in that prison, were in any way remotely connected to the memorandums and directives and regulations issued by General Sanchez and the commanders in Iraq. In fact, all the memorandum said they should follow Geneva Conventions in how they handle prisoners.

Some say we did not train them about the Geneva Conventions. Every American soldier is trained about the Geneva Conventions. I was in the Army Reserve for 10 years. I was a lawyer and U.S. attorney for some of that time, and for a short period of time I was a JAG officer. I taught a course on the Geneva Conventions. You had to sign a document saying you briefed your soldiers every year on the Geneva Conventions.

Everyone knows you cannot torture prisoners, you cannot display them in sexual ways. Everyone knows that. Every private is taught that. Everyone up to the generals is taught that. It is

not the way we are supposed to treat people. Certainly it was not justified and not the policy of the military. It never was the policy of the military. I don't appreciate the suggestion that this was the policy of the military and that somehow the internal memorandums up in the Department of Justice in Washington about hypotheticals and what powers the President might have somehow were carried out in the prisons. They had established policies.

I saw in the Washington Times today, quoting one of these memos, a memo entitled "Humane Treatment." That ought to make some people around here happy. It actually says "Humane Treatment of Al-Qaida and Taliban Detainees." That is a pretty good title for a memorandum. They are complaining about some military memorandum they did not like the title of, saying the title suggested something bad and within the memorandum there were commands to preserve and protect the prisoners.

This title is a good title. President Bush says he accepts "the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to exercise that authority." Of course, our values as a Nation call for us to treat detainees humanely, including those who are not legally entitled to such treatment.

Now, what is all this about? Senator HATCH mentioned, as I believe Senator CORNYN did, and several years ago in the Judiciary Committee we had a number of hearings right after September 11 on what the authority of the United States is with regard to treatment of prisoners and the application of the Geneva Conventions. The Geneva Conventions do not apply to unlawful combatants. It is that simple.

What is an unlawful combatant? It is a person who does not wear a uniform, who enters a country surreptitiously, who attacks civilians, and does not comply with the rules of war. Our enemies are supposed to comply with the rules of war also. Unlawful combatants do not comply with the rules of war. Al-Qaida does not. Most of the people in Afghanistan were not complying with the rules of war and the people who are bombing and killing in Iraq right now are not complying with the rules of war. All of them are unlawful combatants.

One of the reasons for the Geneva Conventions is to give protections to prisoners of war who were lawful combatants, to encourage people to be lawful combatants and not to be unlawful combatants, not to be terrorists who sneak around and bomb people.

Has this ever been dealt with in America? Are we making this up? Is this some idea the Senator from Alabama thinks is an idea that has never been dealt with before? No. In the Judiciary Committee we had a hearing on it and discussed these issues in some

detail not long after September 11. We had testimony and read and debated the Ex parte Quirin case. In Ex parte Quirin, the Nazis sent saboteurs into the United States to bomb and kill and dismantle our civilian structure. That was their plan. They were Nazi saboteurs. They were not wearing German uniforms. They were not acting in a way consistent with the regular Army. Their plan of attack was terrorist in nature. They were apprehended.

The President of the United States, certainly a greatly respected President for our Democratic colleagues who are pushing this legislation, President Franklin Roosevelt, was highly offended. He said we are not going to give them a trial in Federal court. We are not going to try them with a jury in the United States of America. These people are setting about to destroy our country, to kill our people, and to sabotage our civil infrastructure. They are going to be tried, as I have the power to do so, by a military commission. He so ordered it.

They were tried in the U.S. Department of Justice right down the street by a military commission. They did not have public trials. After completely trying the case and building a record and making findings of guilt, most of them were executed within weeks of their arrest. The validity of these trials were challenged and the case went to the Supreme Court of the United States. The Supreme Court affirmed the views of the President. Some of these enemy combatants were given probation and some of them who were tried that way were American citizens.

Crimes were committed in the United States by American citizens, but they were participating as unlawful combatants. They were tried by a military tribunal. They were convicted. Most of them were executed. Some of them got lesser times and one or two who co-operated got out of jail before too long. But all served a considerable amount of time and the Supreme Court said that was appropriate. That was right.

The history of the military commission is strong. That is justice. Military commissions do justice. Military officers are people. They do not want to convict innocent people, send innocent people to jail, or do things that are wrong. They are empowered in combat to use deadly weapons on a whole host of people that could kill them.

President Truman, who followed President Roosevelt, dropped an atom bomb on two cities in Japan. The President of the United States does have powers in wartime that are different from that kind of situation when somebody robs a bank down the street.

Fundamentally, what we are dealing with is how to deal with prisoners under these circumstances. Some people say, a lot of people in this country say, they don't respect us, they don't respect law, they bomb innocent civilians, women, men, children. They cut off people's heads and make a video of

it and brag about it. But they are not entitled to any rights. They are not entitled to any rights. We just ought to go at them and kill them, the sooner the better.

We have some in this body who say these terrorists are entitled to more rights than the laws themselves give. In fact, they have insisted on it. This resolution actually calls on the Government to give these terrorists and unlawful combatants more rights than they are entitled to under the law.

President Bush has said: I am going to comply with the Geneva Conventions. We are going to treat these people humanely. That is the right position, I believe, and that is what he has done. We have given them fair treatment.

I visited Guantanamo and saw how it was done down there early on. I believe they were treated very well. The reports that come out of there continue to show that.

We know we had a terrible problem in Abu Ghraib prison where, on a midnight shift, a group of soldiers were out of control. Now we have a desperate attempt by Members of this Senate to go around and say the abuses that occurred on that night were somehow the responsibility of the Secretary of Defense, General Sanchez, General Abizaid, President Bush, and John Ashcroft.

That is not true. It is wrong. It undermines our ability to lead in the world. It does, I believe, place greater risk on our soldiers who, at this moment, are on the battlefield in Iraq because we sent them there. We should not do that.

If you have legitimate complaints, let's have them, let's hear them in the Senate. But I do not believe we need to be suggesting there is a policy of this Government to mistreat people as was done in Abu Ghraib prison in Iraq.

We had a distinguished senior Senator who said we had traded Saddam Hussein's prisons for American prisons. What he meant by that was we were treating prisoners just as Saddam Hussein did. That is wrong. It is a slander on the soldiers of the United States. It should not have been said. When that was said, it got headlines in the terrorist camps all over the world. It should not have been said. It is false.

Not long ago I had the opportunity to meet seven Iraqi individuals who had had their hands chopped off in Saddam Hussein's prisons, with Saddam Hussein justice. We know of the thousands he had killed there—without trial, without any benefit of being able to put on a defense, and how he used, as a policy of his government, terror.

These kinds of dictators use random violence to terrorize a population to keep power. He did it systematically. This was one of the most brutal dictators in the history of the world. He killed hundreds of thousands of people. There are maybe 300,000 graves in that country of people who were killed.

So it is wrong to say that. Why we keep pushing this, I do not know. I will



just say this: The Armed Services Committee—we have this bill on the floor right now, and it has taken us too long, and it has caused us to not be able to have the hearings we probably would have had—but we are going to have more hearings on what happened in Abu Ghraib prison. Already people are being tried and convicted and sentenced for misbehavior there. We are going to keep on, and the higher up it goes, they are going to be followed.

I was a former prosecutor for some time, and I will ask anybody in this body to tell me: If a soldier is charged with committing an abuse on a prisoner, and he was ordered to do so, or there was some written document he was relying on to do this abuse, do you think he is not going to produce it? Do you think he is not going to say that in his defense? Certainly, he will. So if there are any higher-ups involved in this, it is going to come out.

But, frankly, I do not see the evidence that any higher-ups in the higher echelons of the Government ever issued any orders in any way that would have justified this. It did not happen at any time except on a midnight shift by a few people, who videoed themselves, videoed themselves in circumstances that would be very embarrassing to their mamas and daddies if they had seen it, I can tell you that, on their own behavior, much less what they were doing to the prisoners.

So I do not think it was a pattern. I do not think it was a policy. In fact, all the evidence we have seen so far shows it was not. Within 2 days of this information coming forward to the commanders in that region, General Sanchez ordered an investigation. He suspended people. The military announced publicly, in a public briefing in Iraq, that they were conducting an investigation of abuses at Abu Ghraib prison.

They have continued those investigations. A number of people have been charged criminally by the military. A number of them have had their cases end with punishments being imposed, and others will have them as time goes by. I would say, what more can you ask them to do? They are cracking down. I do not appreciate resolutions such as this that suggest it was a policy of the United States that this occurred, that suggest that our American soldiers are the same as Saddam Hussein's soldiers and prison guards—the way they treated their prisoners. It is not right. It is wrong. It should not be said, and it undermines the confidence that we ask the world and the Iraqis to have in our soldiers.

We believe they are going to do good work. We believe they are doing good work. We know, when you have 100,000, 200,000 soldiers over there, some of them will make mistakes. Just like any city in America that has 200,000 citizens, 130,000 citizens, some of them are going to commit crimes and make errors and do things wrong. They ought to be disciplined. They ought to be held

accountable. But we do not need to fire the mayor because somebody commits a crime on the streets of the city.

Mr. President, I see the Senator from Arizona is in the Chamber, and I know he may well have comments to make on this or other issues.

I will conclude by saying this is not a good resolution. It has no business here. It is contrary to what we ought to be doing.

We ought to be spending our time on how to help our military get a handle on this problem in Abu Ghraib, and we ought to be spending our time mostly on trying to help them be effective in dealing with, capturing, and killing the terrorists who reject all rules of law, who reject all Geneva Conventions, who believe they have a legitimate right to advance their personal power agenda by killing innocent people whenever and wherever they can.

I am most grateful that we have American soldiers this very moment following the vote of this Congress and executing the policy we ask them to execute in Iraq to further freedom and liberty around the world.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Arizona.

#### EXEMPTIONS TO BILATERAL TRADE AGREEMENTS

Mr. KYL. Mr. President, I am going to talk about an amendment which I would have offered to the Defense authorization bill, but in the interest of time and to ensure that we can move the bill forward and complete work on that bill this evening, I am not going to do so.

But I would like to discuss the general subject of the amendment, and begin by complimenting the chairman of the Armed Services Committee, the Senator from Virginia, on recognizing the very important necessity of changing our law to help work very closely with two of our greatest allies, the United Kingdom and Australia.

We transfer a lot of technology back and forth between these two important allies. It is important that we have the capability of doing that. One of the amendments I believe will be adopted as part of this Defense authorization bill is a proposal of the distinguished chairman that would provide an exemption from U.S. law which requires that a bilateral agreement covering a specified set of issues be negotiated in order for a country to obtain an export control waiver. The bilateral agreements between the United States and the United Kingdom and Australia don't quite meet the standard set by U.S. law, so Congress needs to grant an exemption for this. The chairman's amendment is very important in creating this possibility. I strongly associate myself with that amendment.

Just a note or two about this relationship between the United Kingdom and Australia and the United States which illustrates why it is so impor-

tant for us to have this kind of cooperation. I think everybody knows the United Kingdom is our strongest ally in the war on terror. In addition to the over 8,000 personnel they have provided for the military operation, they support food aid. They have contributed a tremendous amount of money for reconstruction. Everyone is aware of their contribution. Perhaps less well known is the contribution that the Australian defense force has made. They contributed about 2,000 of their personnel, including a squadron of FA-18s and special forces elements, two navy frigates. They have a full variety of operations that I won't get into here. They have also been cooperative with us in a lot of other areas such as missile defense programs, and so on.

It is for this reason that the chairman offered his proposal, which I am sure will become part of the Defense bill, that will make it easier for us to transfer equipment that is important to defense between the United States and Great Britain and Australia.

The amendment I was going to offer simply added or would have added another element to that. We won't do it in this bill. Perhaps in conference with the House or at some other point, we could do that.

It is an amendment that would make sure that in the transfer of important munitions between the United States and a country such as Great Britain, they would never get into the wrong hands. That is to say, they wouldn't be exported to a country that might potentially use them against the United States. The reason it is a problem is that some countries in Europe, for example, are talking about lifting the arms embargo that currently exists between those countries, the United States, and China.

We do not send China our most sophisticated military equipment. There is a good reason for that. China has announced plans that it is developing military equipment that could directly compete with the United States in military conflict. So, obviously, we don't want to have a law on the books that would make it easy for a country such as China to acquire military equipment that we share freely with our allies, such as Australia and the United Kingdom, but which we would not want to go to a country such as China.

That is the reason for my concern about this retransfer issue. The news reports have indicated, for example, that the United Kingdom might agree to support the lifting of the European Union's arms embargo against China. That would be an important event. What my amendment would have done is simply said if the European Union were to lift its arms embargo against China, then no U.S. military equipment could be transferred to entities in the European Union unless the President certified to Congress that there are binding assurances from those entities that our military equipment would